

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAUL DENHAM,

Plaintiff,

vs.

CORRECTIONAL OFFICER ARANDA, et
al.,

Defendant.

CASE NO. 09 CV 1505 JLS (WVG)

**ORDER: (1) ADOPTING
MAGISTRATE JUDGE GALLO'S
REPORT AND
RECOMMENDATION; (2)
GRANTING DEFENDANTS'
MOTION TO DISMISS**

(Doc. Nos. 16, 35.)

Plaintiff Paul Denham, an prisoner proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983 against Defendants Correctional Officer Aranda, Nurse Benvin, Captain Marrero, E.A. Contreras, Silvia Garcia, P. Cortez, Director of Corrections Hernandez, Secretary of the California Department of Correction and Rehabilitation Matthew Cate, and Mr. K. Smith. The Complaint alleges that Plaintiff's civil rights were violated by Defendants in August 2007 while housed at the Richard J. Donovan Correctional Facility. On December 4, 2009, Defendants Contreas, Cortez, Hernandez, Marrero and K. Smith filed a motion to dismiss Plaintiff's complaint for failure to state a claim. (Doc. No. 16.) Defendant Cate subsequently filed a notice of joinder to Defendants' motion. Defendants Garcia, Aranda and Benvin did not join the motion, as they have not yet been served in the action.¹ Plaintiff filed an opposition to the motion on January 29, 2010 (Doc. No. 28) and Defendants filed a

¹ The Court notes that there is a pending motion to direct the United States Marshal to re-attempt service of these Defendants. (*See* Doc. No. 15.)

1 reply on February 11, 2010. (Doc. No. 30.)

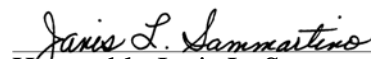
2 On May 3, 2010, Magistrate Judge William V. Gallo issued a Report and Recommendation
3 (R&R) recommending this Court grant Defendants' motion to dismiss all causes of action. (Doc. No.
4 35.) Specifically, the R&R recommends that the causes of action for Eighth Amendment cruel and
5 unusual punishment and deliberate indifference, retaliation, and violation of due process be dismissed
6 without prejudice with leave to amend. (*Id.*) Further, the R&R recommends the Court dismiss
7 Plaintiff's claim for damages against Defendants in their official capacities with prejudice and dismiss
8 the claim for damages against Defendants in their individual capacities without prejudice. (*Id.*)

9 Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1) set forth the
10 duties of a district court in connection with a magistrate judge's report and recommendation. "The
11 district court must make a *de novo* determination of those portions of the report . . . to which objection
12 is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations
13 made by the magistrate." 28 U.S.C. 636(b)(1)(c); *see also United States v. Remsing*, 874 F.2d 614,
14 617 (9th Cir. 1989); *United States v. Raddatz*, 447 U.S. 667, 676 (1980). However, in the absence of
15 timely objection, the Court need "only satisfy itself that there is no clear error on the face of the
16 record." Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (citing *Campbell v. U.S. Dist. Court*,
17 501 F.2d 196, 206 (9th Cir. 1974)).

18 In this case, Plaintiff has failed to timely file objections to Magistrate Judge Gallo's R&R.
19 Having reviewed the R&R, the Court finds that it is thorough, well reasoned, and contains no clear
20 error. Therefore, the Court adopts the R&R in full. The Court hereby: (1) **ADOPTS** Magistrate Judge
21 Gallo's Report and Recommendation, (2) **GRANTS** Defendants' motion to dismiss, and (3) **GRANTS**
22 leave to amend those causes of action and claim for damages which are dismissed without prejudice.
23 Plaintiff may file a First Amended Complaint curing the deficiencies stated in Magistrate Judge
24 Gallo's R&R within 45 days of the date this Order is electronically docketed.

25 IT IS SO ORDERED.

26 DATED: June 21, 2010

27 
28 Honorable Janis L. Sammartino
United States District Judge